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EXAMINER

FONSECA, JESSIE T

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation of 3: The proposed amendment new raises issues which may require a further search and/or consideration. Claim 38 has been amended to recite the first construction member penetrates partially into the groove, which was not previously presented.

Continuation of 11: Applicant argues that Khamis discloses a tongue and groove that are mechanically engaged and therefore fails to disclose binder within the upper and lower faces of the blocks.

Applicant's arguments appear to be against the references individually. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As noted in the final rejection, Breaky and Stewart, Jr. both disclose a binder for placement between construction elements.

Applicant argues that one would not be very successful if binder were applied in the groove of Khamis as the load of another construction element would cause the binder to expel from the groove, which would result in a substantial waste of binder. Applicant further argues the surface on the upper face is too small due to the vertical openings in the element therefore limiting the amount of binder to be applied. In response, one of ordinary skill in the art would recognize the placement and amount of binder can be adjusted to minimize the waste of a binder. The placement of binder

between construction elements is well known in the art, no unpredictable results would result from including a binder between construction elements.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant further argues the Khamis teaches away from using a binder between the faces of the construction elements as the binder is placed in the vertical openings of the construction elements. In response, Examiner notes that it is well known in the art to further provide binder in between construction elements in addition to the openings of a binder. Such a modification would allow for additional securement and integrity of the wall structure.

Applicant further argues that the ratio of weight of the construction element to the surface area of the small base of the trapezoidal of protuberance is not inherently proportional to the fluidity of the binder. The Examiner disagrees as the fluidity of the binder will inherently have to be inversely proportional to the protuberance in order to support the construction element. If the binder were not inversely proportion to the

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protuberance, the binder would not allow for alignment and support of the construction elements.

Applicant further argues that Khamis in view of Breaky or Stewart, Jr, fail to disclose the depth of the groove and a height of the protuberance are approximately equal and proportional to the tolerance which is to be accommodated with each construction element. The Examiner disagrees as applicant is merely reciting a depth and height, which serves to read any stacking blocks having groove and protuberance.

Applicant argues that Khamis fails to disclose the width of the groove being less thickness of the wall. The Examiner disagrees as the thickness of the load bearing wall (A, as denoted in the final rejection) is the face of the block, which is thicker than groove. Examiner notes, that applicant annotates two walls on the face in fig. 1, each wall having a thickness greater than the groove.

/J. F./

Examiner, Art Unit 3633

/Robert J Canfield/

Supervisory Patent Examiner, Art Unit 3635